

PAUL KENDALL & FRANK MARTIN	:	BEFORE THE
Appellants	:	HOWARD COUNTY
vs.	:	BOARD OF APPEALS
HOWARD COUNTY PLANNING BOARD & MANGIONE FAMILY ENTERPRISES OF TURF VALLEY, LP	:	HEARING EXAMINER
Appellees	:	BA Case No. 636-D

.....

DECISION AND ORDER

On June 23, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, conducted a hearing on the administrative appeal of Paul Kendall and Frank Martin (the "Appellants"). The Appellants are appealing the March 28, 2008 letter (the "Planning Board letter") from Cindy Hamilton, Acting Executive Secretary to the Howard County Planning Board, to Louis Mangione, Mangione Enterprises of Turf Valley, LP ("Appellee").¹ The letter informed Appellee of the Planning Board's action to approve SDP-07-084 on March 27, 2008. The appeal is filed pursuant to Howard County Code ("HCC") Section 16.900(j)(2)(iii).

I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Appellants certified that notice of the hearing was advertised and that adjoining property owners were notified as required by the Howard County Code.

The Appellants were not represented by counsel. Sang Oh and Richard Talkin, Esquires, represented Appellee Family Mangione Enterprises of Turf Valley, LP. Frank Martin testified in

¹ The petition misstates date of the ruling or action as March 27, 2008.

opposition to the decision. The Howard County Planning Board did not participate in the proceeding.

At the outset of the hearing, Appellee moved for dismissal of the case for Appellants' failure to timely file the appeal. Upon consideration of Appellee's motion and the testimony and oral arguments presented, and for the reasons stated below, I have determined to grant the motion and dismiss the appeal.²

Background

Mangione Family Enterprises of Turf Valley are the landowners and developers of Turf Valley, a multi-use development in western Howard County consisting of a hotel and conference center, condominiums, townhouses and single-family homes, plus commercial development. The development of Turf Valley is controlled in part by the Planning Board-approved Turf Valley Multi-Use Subdistrict Final Development Plan ("FDP"), as amended. This FDP encompasses drawings depicting development areas and includes development criteria consistent with the underlying PGCC (Planned Golf Course Community) Zoning District.

In 2007 Appellees submitted a site development plan ("SDP") to the Department of Planning and Zoning ("DPZ") for a proposed Turf Valley, Lorien nursing home on Parcel Q of the Oakmont at Turf Valley subdivision, which is situated on the east side of Marriotsville Road in Development Area "L." By letter dated December 20, 2007, DPZ's Subdivision Review Committee notified Appellees that SDP 07-084 may be approved subject to Planning Board approval. The Planning Board subsequently approved the SDP on March 27, 2008.

Paul Kendall and Frank Martin are residents of Turf Valley who are opposed to the approved SDP. Their administrative appeal petition contends the Planning Board failed to take

² Hearing Examiner Rule 3.3 requires me to dismiss a petition if I lack jurisdiction to hear it.

into account its rules and regulations regarding the assessment of the proper safety and traffic and states they are aggrieved because they are residents at the center of the development.

Appellees' Motion to Dismiss

HCC Section 16.900(j)(2)(iii) governs the time period for appealing a Planning Board decision. This section states in pertinent part:

"Any person specially aggrieved by any decision of the Planning Board and a party to the proceedings before it may, within thirty (30) days thereof, appeal said decision to the board of appeals in accordance with section 501 of the Howard County Charter."

The operative decision in this case is the Planning Board letter of March 28, 2008 informing Appellees it had approved SDP-07-084. The 30th day following the Planning Board's letter of decision was Sunday, April 27, 2008. Appellants filed the appeal in this case on Monday, April 28, 2008.

Appellee argues in its memorandum in support of its motion to dismiss that the time to appeal language of HCC Section 16.900(j)(2)(iii) is the exclusive means for delimiting the rights of an appeal, including the allotted time to file an appeal and how to compute the 30-day appeal period. In their response to the motion, and at oral argument, Appellants contend the calculation of the 30-day time is governed by the Maryland Rules of Procedure because Section 501(d) of the Howard County Charter provides that appeals from the Board of Appeals to the Circuit Court of Howard County are governed by the Maryland Rules. They specifically cite to Maryland Rule 7-203(a), which concerns the judicial review of administrative agency decisions (including boards of appeal decisions) and states in relevant part:

(a) Generally.- Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

(1) the date of the order or action of which review is sought;

(2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or

(3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

Relying on Section 7-203(a)(3), Appellants aver their appeal to the Howard County Board of Appeals Hearing Examiner is timely because the 30-day filing period did not begin to run until April 4, 2008, when they received a copy of the decision.³

Discussion

As a starting point, it is well established that the right to appeal is statutory. *Howard County v. JJM*, 301 Md. 256, 482 A.2d 908 (1984) (citing *Maryland Bd. v. Armacost*, 286 Md. 353, 354-55 (1979); *Criminal Inj. Comp. Bd. v. Gould*, 273 Md. 486, 500 (1975); *Urbana Civic v. Urbana Mobile*, 260 Md. 458, 461 (1971)). Where such statute provides a specific remedy and procedure for administrative appeal, they must be followed scrupulously. *National Institutes of Health Federal Credit Union v. Hawk*, , 47 Md. App. 189, 422 A.2d 55 (1980) (internal citations omitted). Where a statute mandates the time to appeal runs from a fixed date, and requires a notice of appeal to be filed with certain days of the decision, the Maryland Court of Appeals has consistently held that the appellate tribunal has no authority to decide a case on its merits when the appeal is not filed within the prescribed time frame after the final decision. *United Parcel Service v. People's Counsel for Baltimore County*, 336 Md. 569, 650 A.2d 226 (1994) (holding the Board of Appeals erred, as a matter of law, that it could exercise jurisdiction under the "discovery rule" to hear an administrative appeal of a building permit issued on October 28, 1986, considering the operative event to be a July 19, 1987 letter from the Zoning Commissioner explaining that the building permit for a warehouse use was properly issued and concluding

³ Appellants apparently equate receiving "notice" of the agency's order or action with the date they each received a

protestants' appeal was untimely where the determinative date for taking an appeal was 30 days from the County's October 28, 1986 issuance of the permit).

In the instant appeal, Appellants' remedy was to file an administrative appeal petition within the 30-day time period prescribed by HCC Section 16.900(j)(2)(iii). This is an absolute prerequisite to pursuing an administrative appeal and pursuant to Hearing Examiner Rule 3.3, the hearing examiner must dismiss an appeal that is not timely filed for lack of jurisdiction. Appellants, however, chose not to file the petition on or before April 27, a Sunday, waiting instead until April 28, a Monday, to do so.

Appellants wrongly aver Maryland Rule 7-203(a) should guide the start date of the 30-day period for filing an administrative appeal. A case addressing the inapplicability of the Maryland Rules' time prescriptions for filing an a board of appeals administrative appeal is *Fallston Meadows Community Ass'n v. Board of Child Care of Baltimore Annual Conference of United Methodist Church*, 122 Md. App. 683, 716 A.2d 344 (1998). The Fallston Meadows protestants appealed a March 1, 1996 Harford County Department of Planning and Zoning decision to approve a preliminary subdivision/site plan to the Board of Appeals on March 25, 1996. The Board of Appeals Hearing Examiner dismissed the appeal for lack of subject-matter jurisdiction, concluding the protestants should have taken the appeal to circuit court. In two separate appeals, the protestants appealed the department's site plan approval and the Board's subsequent ratification of the hearing examiner decision to circuit court. In a consolidated hearing, the circuit court affirmed the Board decision and dismissed the initial appeal as untimely.

After affirming the lower court decision, the Maryland Court of Special Appeals opined

that even if the Board had jurisdiction, the Court would have nonetheless dismissed the appeal, reasoning the initial appeal to the Board of Appeals hearing examiner was not timely filed. The relevant statute required appeals of a decision of the Zoning Administrator to the Harford County Board of Appeals to be taken within 20 days. The Court first found the determinative date for computing the 20-day appeal period to be March 4, 1996, when the County mailed a copy of the plan to the protestants. The 20th day following the March 4 action was Sunday, March 24. Protestants, however, waited until Monday, March 25 to file, one day beyond the allotted 20-day filing period for appealing the decision mailed on March 4.

The *Fallston Meadows* Court rejected the protestants' argument that the time computation prescriptions in Maryland Rule 1-203(c) guided the calculation of the statutory 20-day appeal period, entitling them to file their appeal on Monday, March 25.⁴ As the Court explained, Maryland Rule 1-101 expressly states its time rules apply only to *matters of court in the state*, excepting certain courts (emphasis added). Consequently, the Harford County Board of Appeals is not subject to the dictates of the Maryland Rules, because the board is neither a court of competent jurisdiction nor judicial tribunal within the meaning of the Rules themselves. *Fallston Meadows*, 122 Md. App. at 697-698, 716 A.2d at 351-352.

⁴ Rule 1-203 sets forth the rules for computing the time to file all matters in all courts of this State, except the Orphans' Courts and except as otherwise specifically provided. It states:

(a) In computing any period of time prescribed by these rules, by rule or order of court, or by an applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. If the period of time allowed is more than seven days, intermediate Saturdays, Sundays and holidays are counted; but if the period of time allowed is seven days or less, intermediate Saturdays, Sundays, and holidays are not counted. The last day of the period so computed is included unless:

(1) it is a Saturday, Sunday, or holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or holiday; or

(2) the act to be done is the filing of a paper in court and the office of the clerk of that court on the last day of the period is not open, or is closed for a part of a day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, holiday, or a day on which the office is not open during its regular hours.

In the instant appeal, Appeal may not similarly rely on Rule 7-203 to save their petition. Being a rule of state court, it is not applicable to an administrative appeal to the Board of Appeals Hearing Examiner. Neither the Board nor the Hearing Examiner is a court of competent jurisdiction or judicial tribunal. The time prescribed for filing appeals for their review is governed by local regulations.

In this case, the governing local regulation is HCC Section 16.900(j)(2)(iii). The determinative date for purposes of this appeal is March 28, 2008, the date of the letter informing Appellee of the Planning Board decision to approve its SDP on March 27, 2008. The thirty-day period to appeal ended on April 27, 2008. Because Appellants did not file their appeal until April 28, 2008, the appeal petition was filed beyond the allotted time and must be dismissed as untimely.

ORDER

Based upon the foregoing, it is this 14th day of July 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Appeal of Paul Kendall and Frank Martin in BA Case No. 636-D is hereby **DISMISSED**.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER



Michele L. LeFaivre

Date Mailed: 7/17/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.